

FRIDAY, SEPTEMBER 14, 1787.

JOURNAL

Friday Septemr 14. 1787.

The<sup>1</sup> report from the Committee of revision, as corrected and amended yesterday, being taken up, was read, debated by paragraphs, amended, and agreed to as far as the first clause of the 10 section of the first article inclusive

The House adjourned.<sup>2</sup>

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<sup>1</sup> Crossed out: "It was moved and seconded to reconsider the 3 clause of the 2d sect. 1st article which passed in the negative. It was moved and seconded to add the words 'which shall then fill such vacancies' after the words 'meeting of the Legislature' in the 2d clause of the 3d sect. 1st article which passed in the affirmative." See further Detail of Ayes and Noes, Votes 523-540.

<sup>2</sup> *Journal* (pp. 377-378) adds the following amendments, which may have been taken from the interlineations of the Brearley copy or may have been supplied by Madison:— "Add at the end of the first clause of the eighth section, first article, 'but all duties, imposts and excises, shall be uniform throughout the United States.' Add at the end of the fifth clause of the ninth section, first article, 'no preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another. Nor shall vessels bound to or from one state, be obliged to enter, clear or pay duties in another.' Add at the end of the sixth clause of the ninth section, first article, 'and a regular statement and account of the receipts and expenditures of all publick money shall be published from time to time.'"

*Journal* (pp. 378-379) adds the following changes, evidently compiled from the interlineations of the Brearley copy:— "Article first, second section, clause fifth. Strike out the word 'they.' Article first, section third, clause second. Add at the end of the clause, after the word 'legislature,' the words 'which shall then fill such vacancies.' Article first, section third, clause fourth. Strike out the words 'ex officio.' Article first, section third, clause sixth. After the word 'oath' insert 'or affirmation.' Article first, section eighth, clause third. After the word 'nations,' insert the word 'and.' Article first, section ninth, clause first. Strike out the word 'several,' and between the words 'as' and 'the,' insert the words 'any of.' Alter the third clause so as to read, 'no bill of attainder, or ex post facto law shall be passed.' In the fourth clause, after the word 'capitation,' insert the words 'or other direct.' Article first, section tenth, clause first, was variously amended, to read as follows: 'No State shall enter into any treaty, alliance, or confederation, grant letters of marque and reprisal, coin money, emit bills of credit, make any thing but gold or silver coin a tender in payment of debts, pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.'"

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DETAIL OF AYES AND NOES

	New Hampshire	Massachusetts	Rhode Island	Connecticut	New York	New Jersey	Pennsylvania	Delaware	Maryland	Virginia	No Carolina	So Carolina	Georgia	Questions	ayes	noes	divided
[523] no	no	no	no	no	no	no	no	no	no	no	no	no	no	To reconsider ye 2d clause of the 3rd sect. 1st article	5	6	
[524] no	no	no	no	no	no	no	no	no	no	no	no	no	no			1	10
[525] no	no	no	aye	aye	no	no	no	no	no	no	no	no	no	To reconsider the 1st clause of the 5 sect. 1st article	3	8	
[526] no	no	no	no	no	no	no	no	no	no	no	no	no	no			4	7
[527] aye	aye	aye	aye	aye	aye	dd	no	no	no	no	no	no	no	To reconsider the 1st clause of the 5 sect. 1st article	1	7	
[528] no	no	no	no	no	no	no	no	no	no	no	no	no	no			4	7
[529] no	aye	aye	no	no	no	no	no	no	no	no	no	no	no	To strike out the Treasurer	7	4	
[530] no	no	no	aye	aye	aye	no	no	no	no	no	no	no	no			7	4
[Page 23]																	
[531] aye	no	no	aye	aye	aye	no	aye	aye	no	aye	aye	aye	aye	To strike out the Treasurer	8	3	
[532] aye	aye	aye	aye	aye	aye	no	aye	aye	no	aye	aye	aye	aye			8	3
[533] aye	no	no	aye	aye	aye	no	aye	aye	no	aye	aye	aye	aye	To reconsider ye 10 clause 8 sect. 1 Article	6	5	
[534] no	no	no	no	no	no	no	no	no	no	no	no	no	no			6	5
[535] no	no	no	dd	dd	dd	no	no	no	no	no	no	no	no	To strike out the word "punish"	4	6	
[536] no	no	no	no	no	no	no	no	no	no	no	no	no	no			4	6
[537] no	no	no	no	no	no	no	no	no	no	no	no	no	no	To grant letters of incorporation for Canals &ca	2	9	
[538] aye	aye	aye	no	no	no	no	no	no	no	no	no	no	no			2	9
[539] aye	aye	aye	no	no	no	no	no	no	no	no	no	no	no	To establish an University	5	6	
[540] aye	aye	aye	no	no	no	no	no	no	no	no	no	no	no			5	6
														To reconsider the ex post facto clause			
														To insert The liberty of the Press shall be inviolably preserved			
														To insert the words "or enumeration"			

\* See above, August 16, note 3.

*Friday*

MADISON

*September 14*

## MADISON

Friday Sepr. 14th. 1787 In Convention

The Report of the Committee of stile & arrangement being resumed,

Mr. Williamson moved to reconsider in order to increase the number of Representatives fixed for the first Legislature. His purpose was to make an addition of one half generally to the number allotted to the respective States; and to allow two to the smallest States.

On this motion

N. H. no— Mas. no. Ct no. N. J— no. Pa ay— Del. ay. Md ay. Va. ay. N C. ay. S— C. no. Geo. no [Ayes — 5; noes — 6.]

Art. I. sect. 3.—the words \**“by lot”* were struck out nem: con: on motion of Mr. Madison, that some rule might prevail in the rotation that would prevent both the members from the same State from going out at the same time —

*“Ex officio”* struck out of the same section as superfluous; nem: con: (and *“or affirmation”* after *“oath”* inserted also unanimously —)

Mr Rutledge and Mr. Govr. Morris moved *“that persons impeached be suspended from their office until they be tried and acquitted”*

Mr. Madison — The President is made too dependent already on the Legislature, by the power of one branch to try him in consequence of an impeachment by the other. This intermediate suspension, will put him in the power of one branch only — They can at any moment, in order to make way for the functions of another who will be more favorable to their views, vote a temporary removal of the existing magistrate —

Mr. King (concurrent) in the opposition to the amendment  
On the question to agree to it

N— H. no. Mas. no— Ct. ay— N— J. no. Pa. no. Del—

\**“By lot”* had been reinstated from the Report of five made Aug. 6. as a correction of the printed report by the Come of stile & arrangement.)

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no. Md no. Va. no. N— C. no. S. C. ay, Geo. ay, [Ayes — 3; noes — 8.]

Art. 1. sect. 4. “except as to the places of choosing Senators” added nem: con: to the end of the first clause, in order to exempt the seats of Govt in the States from the power of Congress —<sup>4</sup>

Art. 1. Sect. 5.<sup>5</sup> “Each House shall keep a Journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy.”

Col: Mason & Mr. Gerry moved to insert after the word “parts” the words “of the proceedings of the Senate”<sup>6</sup> so as to require publication of all the proceedings of the House of Representatives.

It was intimated on the other side that cases might arise where secrecy might be necessary in both Houses — Measures preparatory to a declaration of war in which the House of Reps. was to concur, were instanced.

On the question, (it passed in the negative)

(N. H. no. (Rh. Isd:) Mas. no. Con: no. (N. Y. abs) N. J. no. Pen. ay. Del— no. Mary. ay. Virg. no. N. C. ay. S. C. divd. Geor. no) [Ayes — 3; noes — 7; divided — 1.]<sup>7</sup>

Mr Baldwin observed that the clause. art. 1. sect 6. declaring that no member of Congs, “during the time for which he was elected; shall be appointed to any Civil office under the authority of the U. S. which shall have been created, or the emoluments whereof shall have been increased during such time”, would not extend to offices *created by the Constitution*; and the salaries of which would be created, *not increased* by Congs. at their first session — The members of the first

<sup>4</sup> See Appendix A, CCX.

<sup>5</sup> Detail of Ayes and Noes, Vote 526, records a question to reconsider the 1st clause of this section, which was defeated.

<sup>6</sup> In the margin of his copy of the draft of September 12, Mason has worded this proposed change: “of the journals of the senate,” and has written opposite it — “refused”.

<sup>7</sup> Crossed out: “Seven States were in the Negative: three in the affirmative: one divided.” Madison evidently inserted the vote in the text from the list sent to him by John Quincy Adams (see above September 12, note 2). This is Vote 521, Detail of Ayes and Noes.

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Congress consequently might evade the disqualification in this instance. — He was neither seconded nor opposed; nor did any thing further pass on the subject.

Art. I. Sect. 8. “The Congress “may by joint ballot appointed a Treasurer”

Mr Rutledge moved to strike out this power, and let the Treasurer be appointed in the same manner with other officers.

Mr. Gorham & Mr. King said that the motion, if agreed, to would have a mischievous tendency. The people are accustomed & attached to that mode of appointing Treasurers, and the innovation will multiply objections to the System.

Mr. Govr. Morris remarked that if the Treasurer be not appointed by the Legislature, he will be more narrowly watched, and more readily impeached —

Mr. Sherman — As the two Houses appropriate money, it is best for them to appoint the officer who is to keep it; and to appoint him as they make the appropriation, not by joint, but several votes:

Genl Pinkney. The Treasurer is appointed by joint ballot in South Carolina. The consequence is that bad appointments are made, and the Legislature will not listen to the faults of their own officer.

On the motion to strike out

N. H— ay. Mas. no. Ct. ay. N. J. ay. Pa. no. Del— ay— Md ay. Va. no. N— C. ay. S. C. ay. Geo— ay. [Ayes — 8; noes — 3.]

⟨“but all such duties imposts & excises, shall be uniform throughout the U— S—” was unanimously annexed to the power of taxation.⟩

Art I. sect. 8: To define & punish piracies and felonies on the high seas, and “punish” offences against the law of nations.<sup>8</sup>

Mr. Govr. Morris moved to strike out “punish” before the words “offences agst. the law of nations.” so as to let these be *definable* as well as punishable, by virtue of the preceding member of the sentence.

<sup>8</sup> Detail of Ayes and Noes, Vote 532, records the adoption of a motion to reconsider this clause.

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Mr. Wilson hoped the alteration would by no means be made. To pretend to *define* the law of nations which depended on the authority of all the Civilized Nations of the World, would have a look of arrogance. that would make us ridiculous.

Mr. Govr The word *define* is proper when applied to *offences* in this case; the law of (nations) being often too vague and deficient to be a rule.

On the question to strike out the word "punish" (it passed in the affirmative)

N— H. ay. Mas— no. Ct. ay. N— J. ay. Pa. no. Del. ay Md. no. Va. no. N. C— ay— S— C— ay. Geo— no. [Ayes — 6; noes — 5.]

Docr. Franklin moved \* to add after the words "post roads" Art (I) Sect. 8. "a power to provide for cutting canals where deemed necessary"<sup>9</sup>

Mr Wilson 2ded. the motion

Mr Sherman objected. The expence in such cases will fall on the U— States, and the benefit accrue to the places where the canals may be cut.

Mr Wilson. Instead of being an expence to the U. S. they may be made a source of revenue.

Mr. Madison suggested an enlargement of the motion into a power "to grant charters of incorporation where the interest of the U. S. might require & the legislative provisions of individual States may be incompetent". His primary object was however to secure an easy communication between the States which the free intercourse now to be opened, seemed to call for— The political obstacles being removed, a removal of the natural ones as far as possible ought to follow. Mr. Randolph 2ded. the proposition.

Mr King thought the power unnecessary.

Mr Wilson. It is necessary to prevent a *State* from obstructing the *general* welfare.

\* (This motion by Dr. Franklin not stated in the printed Journal, as are some other motions.)

<sup>9</sup> Upon this discussion, see Appendix A, CCLVII—CCLX, CCLXXVIII, CCCL, CCCLIII, CCCLXXIV.

*Friday*

MADISON

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Mr King— The States will be prejudiced and divided into parties by it— In Philada. & New York, It will be referred to the establishment of a Bank, which has been a subject of contention in those Cities. In other places it will be referred to mercantile monopolies.

Mr. Wilson mentioned the importance of facilitating by canals, the communication with the Western Settlements— As to Banks he did not think with Mr. King that the power in that point of view would excite the prejudices & parties apprehended. As to mercantile monopolies they are already included in the power to regulate trade.

Col: Mason was for limiting the power to the single case of Canals. He was afraid of monopolies of every sort, which he did not think were by any means already implied by the Constitution as supposed by Mr. Wilson.

The motion being so modified as to admit a distinct question specifying & limited to the case of canals.

N— H— no— Mas. no. Ct. no— N— J— no— Pa ay. Del. no— Md. no. Va. ay. N— C— no— S— C. no— Geo. ay. [Ayes — 3; noes — 8.]

The other part fell of course, as including the power rejected.

Mr. Madison & Mr. Pinkney then moved to insert in the list of powers vested in Congress a power — “to establish an University, in which no preferences or distinctions should be allowed on account of religion.”<sup>10</sup>

Mr Wilson supported the motion

Mr Govr Morris. It is not necessary. The exclusive power at the Seat of Government, will reach the object.

On the question

N. H. no— Mas. no. Cont. divd. Dr. Johnson ay— Mr. Sherman no. N. J— no. Pa ay. Del. no. Md. no. Va. ay. N— C— ay— S— C— ay. Geo— no. [Ayes— 4; noes— 6; divided— 1.]

Col: Mason, being sensible that an absolute prohibition of standing armies in time of peace might be unsafe, and wishing at the same time to insert something pointing out and

<sup>10</sup> See Appendix A, CCLV, CCCXC.

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guarding against the danger of them, moved to preface the clause (Art I sect. 8) "To provide for organizing, arming and disciplining the Militia &c" with the words "And that the liberties of the people may be better secured against the danger of standing armies in time of peace" Mr. Randolph 2ded. the motion

Mr Madison was in favor of it. It did not restrain Congress from establishing a military force in time of peace if found necessary; and as armies in time of peace are allowed on all hands to be an evil, it is well to discountenance them by the Constitution, as far as will consist with the essential power of the Govt. on that head.

Mr Govr. Morris opposed the motion as setting a dishonorable mark of distinction on the military class of Citizens

Mr Pinkney & Mr. Bedford concurred in the opposition.

On the question

N. H— no— Mas— no— Ct no. N— J— no. Pa. no. Del. no. (Maryd no)<sup>11</sup> Va ay— N. C. no. S. C. no. Geo. ay.  
[Ayes — 2; noes — 9.]

Col: Mason moved to strike out from the clause (art I sect 9.) "No bill of attainder nor any ex post facto law shall be passed" the words "nor any ex post facto law".<sup>12</sup> He thought it not sufficiently clear that the prohibition meant by this phrase was limited to cases of a criminal nature— and no Legislature ever did or can altogether avoid them in Civil cases.

Mr. Gerry 2ded. the motion but (with a view) to extend the prohibition to "Civil cases", which he thought ought to be done.

On the question; all the States were — no<sup>13</sup>

Mr Pinkney & Mr. Gerry, moved to insert a declaration "that the liberty of the Press should be inviolably observed —"<sup>14</sup>

<sup>11</sup> Taken from *Journal*.

<sup>12</sup> Detail of Ayes and Noes, Vote 537, makes this a motion "to reconsider the ex post facto clause", which is more in keeping with Gerry's remarks in seconding it.

<sup>13</sup> Crossed out "N. H. no. Mas. no. . . . Geo. no."

<sup>14</sup> See Pinckney's proposition on August 20, and Appendix A, CLXXIII, CXCII.



Friday

MADISON

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Mr. Sherman— It is unnecessary— The power of Congress does not extend to the Press. On the question, (it passed in the negative)

N— H— no—\* Mas— ay— Ct no. N— J. no. Pa no. Del. no. Md ay. Va. ay. N. C. no. S. C. ay. Geo— no. [Ayes — 4; noes — 7.]<sup>15</sup>

Art. I. Sect. 9. “no capitation tax shall be laid, unless &c”

Mr Read moved to insert after “capitation” the words. “or other direct tax” He was afraid that some liberty might otherwise be taken to saddle the States with a readjustment by this rule, of past Requisitions of Congs — and that his amendment by giving another cast to the meaning would take away the pretext. Mr Williamson 2ded. the motion, which was agreed to,

On motion of Col: Mason “or enumeration” inserted after, as explanatory of “Census” (Con. & S. C. only. no.)<sup>16</sup>

At the end of the clause “no tax or duty shall be laid on articles exported from any State” was added the following amendment conformably to a vote on the day of viz — no preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to or from one State, be obliged to enter, clear or pay duties in another.<sup>17</sup>

Col. Mason moved a clause requiring “that an Account of the public expenditures should be annually published” Mr Gerry 2ded. the motion

Mr Govr. Morris urged that this wd. be impossible in many cases.

Mr. King remarked, that the term expenditures went to every minute shilling. This would be impracticable. Congs. might indeed make a monthly publication, but it would be in such general Statements as would afford no satisfactory information.

Mr. Madison proposed to strike out “annually” from the

\* (In the printed Journal N. Hampshire ay.)

<sup>15</sup> McHenry agrees with Detail of Ayes and Noes, Vote 538, in making the vote Ayes, 5; noes, 6.

<sup>16</sup> Taken from *Journal*.

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motion & insert "from time to time". which would enjoin the duty of frequent publications and leave enough to the discretion of the Legislature. Require too much and the difficulty will beget a habit of doing nothing. The articles of Confederation require half-yearly publications on this subject— A punctual compliance being often impossible, the practice has ceased altogether—

Mr Wilson 2ded. & supported the motion— Many operations of finance cannot be properly published at certain times.

Mr, Pinkney was in favor of the motion.

Mr. Fitzimmons— It is absolutely impossible to publish expenditures in the full extent of the term.

Mr. Sherman thought "from time to time" the best rule to be given.

"Annual" was struck out — & those words — inserted  
nem: con:

The motion of Col. Mason so amended was then agreed to  
nem: con: and added after — "appropriations by law as follows— "And a regular statement and account of the receipts & expenditures of all public money shall be published from time to time."<sup>17</sup>

The first clause of Art I. sect 10 — was altered so as to read— "No State shall enter into any Treaty alliance or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold & silver coin a tender in payment of debts; pass any bill of attainder, ex post law, or law impairing the obligation of contracts,<sup>18</sup> or grant any title of nobility."<sup>17</sup>

Mr Gerry entered into observations inculcating the importance of public faith, and the propriety of the restraint put on the States from impairing the obligation of contracts — Alledging that Congress ought to be laid under the like prohibitions. he made a motion to that effect. He was not 2ded

Adjourned.

<sup>17</sup> This paragraph is possibly a later insertion. If so it was taken from *Journal*. See above note 2.

<sup>18</sup> "obligation of contracts", see above August 28 and Appendix A, CCXXIX, CCCXCVIII.

*Friday*

McHENRY

*September 14*

## McHENRY

14 Septr.

Moved by Dr. Franklin seconded by Mr. Willson, to empower Congress to open and establish canals.

This being objected to — moved by Virginia To empower Congress to grant charters of incorporation in cases where the U. S. may require them and where the objects of them cannot be obtained by a State.

Negatived.

Moved To authorize Congress to establish an university to which and the honors and emoluments of which all persons may be admitted without any distinction of religion whatever. Congress enabled to erect such an institution in the place of the general government. Thus Congress to possess exclusive jurisdiction.

Neg. 6 Noes. 3 ay. 1 State divided.

Moved — And the liberty of the press shall be inviolable.  
6 noes. 5 ays.